

Honorable Ricardo S. Martinez

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

QWEST CORPORATION,

Plaintiff,

v.

ANOVIAN, INC., et al.

Defendants.

Case No. 2:08-cv-01715-RSM

**MOTION FOR ENTRY OF RULE 54(b)  
FINAL JUDGMENT**

NOTE ON MOTION CALENDAR:  
January 15, 2010

Plaintiff Qwest Corporation (“Qwest”), by and through its undersigned counsel, hereby moves, in the alternative, for entry of a Rule 54(b) final judgment with regard to (i) the Court’s December 16, 2009 Order Granting Defendant Transcom’s Motion to Dismiss for Lack of Jurisdiction (Dkt. No. 67) and (ii) the Court’s December 16, 2009 Order Granting the Broadvox Defendants’ Motion to Dismiss for Lack of Jurisdiction (Dkt. No. 68) and states the following in support hereof:

**FACTUAL BACKGROUND**

1. On December 16, 2009, the Court dismissed for lack of personal jurisdiction Defendants Broadvox, Inc., Broadvox, LLC, and BroadvoxGo!, LLC (collectively, the “Broadvox Defendants”) (Dkt. No. 68) and Defendants Transcom Enhanced Services, Inc. and Transcom Holdings, Inc. (collectively, the “Transcom Defendants”) (Dkt. No. 67). In so

1 granting each of these Defendants' Rule 12(b)(2) Motions to Dismiss, the Court specifically  
2 stated that "this action is DISMISSED for lack of jurisdiction," and directed that "[t]he Clerk  
3 shall enter judgment accordingly." Dkt No. 67, at 7, lines 20-21 (emphasis in original); Dkt. No.  
4 68, at 7, lines 21-22 (emphasis in original).

5 2. Contemporaneous with this motion, Qwest has filed two additional motions: (i) a  
6 Motion for Reconsideration of the Order Granting Defendant Transcom's Motion to Dismiss for  
7 Lack of Jurisdiction and the Order Granting the Broadvox Defendants' Motion to Dismiss for  
8 Lack of Jurisdiction; and (ii) a Motion for Reconsideration Regarding Denial of Jurisdictional  
9 Discovery, made in the alternative. This instant Motion for Entry of Rule 54(b) Final Judgment  
10 is made in the alternative to these other two motions, and should be relevant only if the Court  
11 denies both of Qwest's motions for reconsideration.

#### 12 DISCUSSION

13 3. If the Court denies Qwest's Motion for Reconsideration (Dkt. No. [TBD]) and  
14 does not withdraw its prior December 16, 2009 Order granting Defendant Broadvox' and  
15 Transcom's respective Rule 12(b)(2) Motions to Dismiss, and if the Court also denies Qwest's  
16 Motion for Reconsideration Regarding Denial of Jurisdictional Discovery (Dkt. No. [TBD]),  
17 Qwest moves, in the alternative, that the Court enter a final judgment, pursuant to Fed. R. Civ. P.  
18 54(b), to allow Qwest to immediately appeal the Court's Orders dismissing the Broadvox  
19 Defendants and the Transcom Defendants for lack of personal jurisdiction.

20 4. It may be that the Court already intended this result, based on its direction to the  
21 Clerk to "enter judgment" to indicate that "this action," as against the Broadvox Defendants and  
22 the Transcom Defendants, "is dismissed for lack of jurisdiction." Nonetheless, out of an  
23 abundance of caution, Qwest brings this motion to ensure that the Court enters a clear *Rule 54(b)*

1 final judgment as to these defendants to allow the immediate appeal of the orders granting the  
2 Broadvox Defendants' and the Transcom Defendants' 12(b)(2) Motions to Dismiss, as is  
3 appropriate in this case.

4 5. Rule 54(b) of the Federal Rules of Civil Procedure provides in relevant part:

5 When an action presents more than one claim for relief . . . or *when*  
6 *multiple parties are involved*, the court may direct entry of a final  
7 judgment as to one or more, but fewer than all, claims or parties  
8 only *if the court expressly determines that there is no just reason*  
9 *for delay*. (emphasis added).

10 6. If the Court denies Qwest's motions for reconsideration, and stays the course  
11 directing the Clerk to enter judgment for the Broadvox Defendants and the Transcom  
12 Defendants, the Court should make clear that the judgment it is directing the Clerk to enter, is, by  
13 definition, a final judgment pursuant to Rule 54(b). To be sure, Qwest would prefer that the  
14 Court grant one of its well-considered motions for reconsideration, but in the event it does not,  
15 Qwest brings this motion to ensure that any judgment that is entered is clear. The entry of any  
16 such final judgment should further clearly state that judgment is entered pursuant to Rule 54(b),  
17 and that there is no just reason for delaying the adjudication on appeal of the Court's finding that  
18 it lacks personal jurisdiction over the Broadvox Defendants and the Transcom Defendants.

19 7. No just reason for delay exists because (i) the jurisdictional claims are easily  
20 severable from the merits of the lawsuit and (ii) the immediate appeal of the jurisdictional claims  
21 would serve the efficient administration of justice. In *Core-Vent Corp. v. Nobel Industries AB*,  
22 the Ninth Circuit readily affirmed the district court's entry of a Rule 54(b) final judgment  
23 regarding the dismissal of less than all defendants for lack of personal jurisdiction. 11 F.3d  
24 1482, 1484 (9th Cir. 1993). Core-Vent brought suit against four Swedish doctors among other  
25 defendants. *Id.* The district court granted the Swedish doctors' motion to dismiss for lack of

1 personal jurisdiction and also entered a final judgment, pursuant to Fed. R. Civ. P. 54(b). *Core-*  
2 *Vent*, 11 F.3d at 1484. In the appeal, the Swedish doctors argued that “the district court abused  
3 its discretion in granting Core-Vent’s motion for the entry of final judgment.” *Id.*

4 8. “Rule 54(b) certification is proper if it will aid expeditious decision of the case.  
5 However, Rule 54(b) certification is scrutinized to prevent piecemeal appeals in cases which  
6 should be reviewed only as single units.” *Id.* (internal quotations omitted); *Wood v. GCC Bend,*  
7 *LLC*, 422 F.3d 873, 878 n.2 (9th Cir. 2005) (indicating that “it was proper for the district judge to  
8 consider such factors as whether the adjudicated claims were separable from the others and  
9 whether the nature of the claim was such that no appellate court would have to decide the same  
10 issues more than once” in determining whether to enter a Rule 54(b) final judgment) (citing  
11 *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 8 (1980)). In *Core-Vent*, the Ninth  
12 Circuit concluded that “dealing with the jurisdictional issue now may obviate the need for a  
13 second trial,” aiding in the “expeditious decision of the case.” *Core-Vent*, 11 F.3d at 1484. The  
14 Ninth Circuit further concluded that “the jurisdictional question at issue here is unrelated to the  
15 other issues in the case; thus, entry of final judgment will not lead to undesirable ‘piecemeal  
16 appeals.’” *Id.*

17 9. Here, like in *Core-Vent*, there is no just reason for delay in allowing an appeal of  
18 the Court’s determination on the issue of personal jurisdiction over the Transcom Defendants  
19 and the Broadvox Defendants. This issue is unrelated to the merits of the underlying lawsuit and  
20 dealing with the jurisdictional issue now may obviate the need for a second trial. In addition,  
21 little if any risk exists that the Ninth Circuit would be faced with having to decide the issue of  
22 personal jurisdiction over the Transcom Defendants and the Broadvox Defendants a second time.  
23 Allowing the Ninth Circuit to immediately hear an appeal on whether the Court has personal

1 jurisdiction over the Transcom Defendants and the Broadvox Defendants will remove any doubt  
2 as to the correctness of the Court's dismissal of these parties for lack of personal jurisdiction.

3 10. Further, entry of final judgment pursuant to Rule 54(b) will prevent undue delay  
4 and prejudice to Qwest. Defendants Unipoint Holdings, Inc., Unipoint Enhanced Services, Inc.  
5 (d/b/a "Point One") and Unipoint Services, Inc. (the "Unipoint Defendants") remain in the case.  
6 On December 15, 2009 the Court granted the Unipoint Defendants' 12(b)(6) Motion to Dismiss,  
7 but allowed Qwest thirty (30) days to file an amended complaint to address what the court  
8 deemed to be deficiencies in Qwest's original Complaint. Qwest anticipates filing such an  
9 amended complaint, and proceeding against the Unipoint Defendants. Should that action  
10 proceed through discovery and trial, the inefficiency and prejudice that will result, if the Court's  
11 dismissal of the remaining defendants is not subject to immediate appeal, should be apparent.  
12 While Qwest could eventually appeal the Court's orders dismissing the Transcom Defendants  
13 and the Broadvox Defendants when the remaining action against the Unipoint Defendants is  
14 completed, that could be years down the road.

15 11. Further, if the Court's determination as to personal jurisdiction over the Broadvox  
16 and Transcom Defendants is ultimately reversed, that would necessitate a second trial. The  
17 expense of a largely duplicative trial could be avoided by ensuring that this Court's  
18 determination on personal jurisdiction is reviewable now. *See, e.g., Advanced Magnetics, Inc. v.*  
19 *Bayfront Partners, Inc.*, 106 F.3d 11, 16-17 (2d Cir. 1997) (holding that entry of a Rule 54(b)  
20 final judgment was appropriate where an immediate appeal may help avoid a second costly trial).

21 12. The additional delay resulting from a second trial also potentially jeopardizes  
22 Qwest's ability to fully recover the alleged damages even if it eventually prevails on the merits.  
23 The Transcom Defendants have already emerged from one round of bankruptcy. Dkt. No. 67, at

2, lines 10-15. Moreover, Defendant Anovian Inc. (now dismissed) has recently ceased all operations. *See* Qwest Consolidated Opposition Brief to Defendants’ Motions to Dismiss, Dkt. No. 55, Exhibit C. The questionable long-term solvency of the defendants further weighs in favor of this Court entering a Rule 54(b) final judgment regarding the Court’s December 16, 2009 Orders dismissing the Transcom Defendants and the Broadvox Defendants for lack of personal jurisdiction. *See Curtiss-Wright Corp.*, 446 U.S. at 12 (discussing that defendant insolvency “would weigh in favor of certification”).

WHEREFORE, Qwest requests that, if the Court denies Qwest’s Motion for Reconsideration relating to the Court’s December 16, 2009 Orders dismissing the Transcom Defendants and the Broadvox Defendants for lack of personal jurisdiction, and if the Court further denies Qwest Motion for Reconsideration Regarding Denial of Jurisdictional Discovery, then, in the alternative, the Court:

1) enters a Rule 54(b) final judgment regarding the Court’s December 16, 2009 Orders dismissing the Transcom Defendants and the Broadvox Defendants for lack of personal jurisdiction;

2) expressly finds and states there is no just reason to delay the appeal of this Court’s determination that it lacks personal jurisdiction over the Transcom Defendants and the Broadvox Defendants; and

3) expressly articulates this Court’s reasons for determining that any such entry of judgment is a Rule 54(b) entry of final judgment as to these defendants, and explains why immediate appellate review is advisable regarding its December 16, 2009 Orders granting the Broadvox Defendants’ and Transcom Defendants’ respective 12(b)(2) Motions to Dismiss.

1 Dated this 30th day of December, 2009.

2 Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2009, I electronically filed the foregoing **MOTION FOR ENTRY OF RULE 54(b) FINAL JUDGMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: December 30, 2009

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